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UNITED NATIONS CONFERENCE ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

SUMMARY RECORD OF THE 8th PLENARY MEETING

Held at the Austria Center Vienna,
on Wednesday, 17 April 1991, at 2.30 p.m.

President: Mr. ABASCAL (Mexico)

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The meeting was called to order at 3.45 p.m.

CONSIDERATION OF THE QUESTION OF THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTION 44/33 OF 4 DECEMBER 1989 (agenda item 9) (continued)

Draft Convention on the Liability of Operators of Transport Terminals in International Trade (continued) (A/CONF.152/11, 12; A/CONF.152/L.6)

Article 22 (continued) (A/CONF.152/L.4)

1. Mr. RUSTAND (Sweden), referring to the statement made by the representative of Italy at the 7th plenary meeting, said that countries should base their decisions whether or not to ratify the Convention on the substance of its provisions, not on what other countries did. For that reason he was unable to support the joint proposal by the Netherlands and the United Kingdom (A/CONF.152/L.4).

2. Mr. CHRISTOV (Bulgaria) said that in principle his delegation had no objection to the joint proposal, but would prefer to see an appropriate change made in article 1 rather than in article 22.

3. Mr. LARSEN (United States of America) said that his delegation still believed that the Convention should enter into force upon receipt of five instruments of ratification, acceptance, approval or accession, because of its peculiar nature and the way in which it was geared to the needs of each individual country. The Conference might also bear in mind that a precedent for five instruments had been set by the Visby Protocol to the Hague Rules.

4. Ms. ERIKSSON (Finland) said that her delegation strongly supported the original text requiring the deposit of five instruments, for the reasons stated by the representatives of Italy and Sweden. Experience had shown that a Convention generally became more attractive to States after it had entered into force. Some of the articles of the Convention had been drafted with the Hamburg Rules in mind, and the fact that those Rules were expected to enter into force at an early date, only one more instrument being required, was a good reason for having a low requirement for the present Convention.

5. Miss VAN DER HORST (Netherlands) reminded the Conference that the German delegation and her own had proposed in the Second Committee that the deposit of 15 instruments should be required for entry into force. That proposal had been rejected by no more than a small majority, of 8 votes to 5. The joint proposal (A/CONF.152/L.4) should therefore be considered a compromise.

6. Mr. SOLIMAN (Egypt) supported the joint proposal considering that 10 was the minimum number of instruments needed to ensure that the Convention would be effective.

7. Mr. LAVIÑA (Philippines) expressed support for the text as drafted, requiring the deposit of 5 instruments. While it was not normally desirable to fix the number required too low, the possibility of the Hamburg Rules entering into force in the very near future provided an incentive for deciding on 5 instruments for the present Convention.

8. The PRESIDENT invited the Conference to vote on the joint proposal (A/CONF.152/L.4).

9. The proposal was rejected by 19 votes to 9, with 8 abstentions.

10. The PRESIDENT invited the Conference to vote on article 22 as set forth in document A/CONF.152/12.

11. Article 22 was adopted by 25 votes to 4, with 6 abstentions.

Article 23

12. Article 23 was adopted by 34 votes to none.

Article 24

13. Article 24 was adopted by 35 votes to none.

Article 25

14. Article 25 was adopted by 34 votes to none.

Preamble (A/CONF.152/L.6)

15. Mr. SWEENEY (United States of America), introducing the proposed preamble (A/CONF.152/L.6) on behalf of the sponsors, said that the first and second paragraphs explained the purpose of the Convention and the reasons why it had come into being. The third paragraph had been taken from General Assembly resolution 44/33 calling for the Conference to be convened.

16. Mr. RAO (India) said that while in principle his delegation could support the proposed preamble, it considered that in the second paragraph the words "for the loss, damage or delay to such goods" should be brought into line with article 5 (1) and read: "for loss resulting from loss of or damage to the goods, as well as from delay in handing over the goods".

17. Mr. BERAUDO (France) said that in general he welcomed the proposed preamble, which set forth the general ideas underlying the text as a whole and expressed the philosophy of its authors. It would be more logical, however, if the third paragraph came first, so that the sequence of thought was from the general to the particular. In addition, the words "reaffirming its conviction" in that paragraph should read "affirming their conviction". Lastly, in view of the political changes which had taken place over the past two years, the words "among all States" in the same paragraph could be deleted, as it was becoming increasingly clear that economic cooperation could be established directly between individuals and that the position of the State as intermediary was fast disappearing.

18. Mr. MORAN (Spain) said that he could accept the French proposal to change the order of the paragraphs. With regard to the proposal to delete the words "among all States", despite the political changes over the past two years, they did not run counter to the general spirit of the paragraph, and should remain. He could not support the proposal by the representative of India, considering that a preamble did not have to be aligned with any particular article in the body of a convention; rather it should be of a general nature and reflect the reasons why the Convention had come into being.

19. Mr. LAVIÑA (Philippines) said that the Indian representative's proposal was right both logically and grammatically. In the light of the comment made by the representative of Spain, however, he would suggest that the phrase might read: "for the loss of, damage to or delay in delivery of such goods". As regards the French proposal to change the order of the paragraphs, it was stylistically

(Mr. Laviña, Philippines)

appropriate that as the most important item the quotation from a very important General Assembly resolution should come last.

20. Mr. BONELL (Italy) supported the French proposal to change the order of the paragraphs but could not support the deletion of the words "among all States". He agreed with the representative of India that it would be preferable to align the text of the second paragraph with article 5, with the stylistic changes suggested by the representative of the Philippines, except for the words "delivery of such goods", which he would prefer to replace by "in handing over the goods", as in article 5.

21. Miss VAN DER HORST (Netherlands) said that as she understood the Convention, both the carrier and the operator were in charge of the goods, the carrier with respect to the other party to the contract of carriage, and the terminal operator with respect to the other party to his contract. She therefore proposed that the words: "not in the charge of carriers nor in the charge of cargo-owning interests but while they are" should be deleted from the first paragraph, which would then read: "Considering the problems created by the uncertainties as to the legal regime applicable with regard to goods in international carriage when the goods are in charge of operators of transport terminals in international trade".

22. Mr. TARKO (Austria) supported the Netherlands proposal, the views of Italy with respect to the second paragraph and the French proposal to change the order of the paragraphs.

23. Mr. ROMAN (Belgium) said that while agreeing with the general idea behind the third paragraph of the proposed preamble, his delegation was not convinced that the Convention itself was in the interests of the developing countries, although progressive harmonization was. In trying to fill the gaps left by the existing conventions, the present draft Convention had gone too far too quickly. His delegation would therefore have to abstain on the preamble.

24. Mr. RUSTAND (Sweden) supported the proposed preamble with the paragraphs re-ordered as proposed by the representative of France.

25. Mrs. PIAGGI DE VANOSSI (Argentina) supported the draft preamble as amended by the French representative but could not agree to the proposal by the representative of India.

26. Mr. SMITH (Australia) endorsed the French proposal to re-order the paragraphs. He would favour the deletion proposed by the representative of the Netherlands if that caused no serious difficulty for any other delegation; he could accept the Indian proposal as modified by the representative of the Philippines.

27. Mr. RAO (India) submitted that it was central to article 5 that delay in the delivery of goods would give rise to liability under the Convention only when it led to loss, which was the main concern. The aim of his amendment had been to correct the impression given in the draft preamble that there could be liability for mere delay in delivery: that impression seemed to prevail in the formulation proposed by the representative of the Philippines.

28. Mr. ROJANAPHRUK (Thailand), arguing in favour of simplicity in the preambular paragraphs, proposed that the second should be amended to read:

(Mr. Rojanaphruk, Thailand)

"Intending to facilitate the movement of goods by establishing uniform rules concerning liability of operators of transport terminals which is not covered by the laws of carriage arising out of conventions applicable to the various modes of transport".

29. Mr. PAMBOU-TCHIVOUNDA (Gabon) proposed that the third paragraph should be divided into two parts, to be separated by what were at present the first and second paragraphs. The first of those parts would stress that the progressive harmonization and unification of international trade law should reduce or remove legal obstacles to the flow of international trade. The second would underline the Convention's specific role in promoting the objectives set out in the final lines of the original draft preamble. Such a re-ordering of the text would remove the unrealistic presumption that the harmonization and unification of international trade law would significantly contribute to economic cooperation based on equality, equity and common interest. He suggested that a working group might be set up to draft a new preamble, taking account of his and other representatives' proposals.

30. The PRESIDENT said that the proposal by the representative of Gabon, which went beyond the limits of a mere amendment, had not been submitted in good time. He did not think, therefore, that it could be discussed.

31. Mr. BONELL (Italy) and Mr. SHATANI (Libyan Arab Jamahiriya) considered that the Conference might be able to discuss the Gabonese proposal.

32. Mr. INGRAM (United Kingdom) welcomed the amendment put forward by the representative of the Netherlands, which had a considerable bearing on the future interpretation of the Convention.

33. The PRESIDENT put to the vote the French proposal that the third paragraph of the draft preamble (A/CONF.152/L.6) should become the first.

34. The proposal was adopted by 21 votes to 5, with 9 abstentions.

35. Mr. PAMBOU-TCHIVOUNDA (Gabon) requested that a vote should be taken on his amendment to the original last paragraph of the preamble, proposing that the three lines, as far as "international trade", should be modified to read "Considering that the progressive harmonization and unification of international trade law should help reduce or remove legal obstacles to the flow of international trade" and should then be made into a separate paragraph serving as the first paragraph of the preamble.

36. The PRESIDENT invited the Conference to vote on the amendment proposed by Gabon.

37. The amendment was rejected by 18 votes to 3, with 15 abstentions.

38. Mr. BERAUDO (France) withdrew his proposal that the words "among all States" in the original last paragraph, now the first, should be deleted.

39. The PRESIDENT invited the Committee to vote on the amendment proposed by the Netherlands to the original first paragraph of the draft preamble, now the second, to delete the words "are not in the charge of carriers nor in the charge of cargo-owning interests but while they".

40. There were 15 votes in favour, 14 against and 9 abstentions. Having failed to obtain the required two-thirds majority, the proposal was not adopted.

41. The PRESIDENT invited the Conference to vote on the amendment proposed by Thailand to the original second paragraph of the draft preamble, now the last.

42. The amendment was rejected by 14 votes to 7 with 17 abstentions.

43. The PRESIDENT invited the Conference to vote on the proposal of the Philippines, as amended by Italy, that the phrase "for the loss, damage or delay to such goods" in the last paragraph should be replaced by "liability for the loss of, damage to, or delay in handing over of such goods".

44. The amendment was adopted by 20 votes to 2, with 17 abstentions.

45. The PRESIDENT invited the Conference to vote on the draft preamble (A/CONF.152/L.6) as amended.

46. The preamble as amended was adopted by 35 votes to none, with 3 abstentions.

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE, AND OF THE FINAL ACT OF THE CONFERENCE (agenda item 10) (A/CONF.152/11, 12; A/CONF.152/L.1, L.6)

47. Mr. LAVIÑA (Philippines) said that the Conference might perhaps have facilitated its decision-making, especially in the committees, by taking an indicative vote rather than a formal one on some occasions. He also felt that the search for consensus had sometimes led to excessive haste in the deliberations at committee level. It was important, now that the time had come to vote on the Convention as a whole, that delegations should take an unequivocal position. He therefore requested that a roll-call vote should be taken on the draft Convention as a whole.

48. The PRESIDENT called on the Conference to vote on the draft Convention as a whole (A/CONF.152/11, 12; A/CONF.152/L.6), as amended.

49. At the request of the representative of the Philippines, the vote was taken by roll-call.

50. Lesotho, having been drawn by lot by the President, was called upon to vote first.

In favour: Argentina, Australia, Austria, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, China, Denmark, Egypt, Finland, France, Gabon, Germany, Guinea, India, Iran (Islamic Republic of), Israel, Italy, Japan, Lesotho, Mexico, Nigeria, Philippines, Republic of Korea, Spain, Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Yugoslavia.

Against: None.

Abstaining: Belgium, Indonesia, Libyan Arab Jamahirya, Netherlands, Saudi Arabia, Turkey, United Kingdom of Great Britain and Northern Ireland.

51. The Convention as a whole, as amended, was adopted by 31 votes to none, with 7 abstentions.

52. Mr. INGRAM (United Kingdom), speaking in explanation of vote, said that his delegation had abstained on the Convention as a whole. It had not voted against the text, for two reasons. First, the United Kingdom shared the universal commitment to the harmonization and unification of international trade law. Secondly, it respected the tremendous effort put into the draft Convention by so

(Mr. Ingram, United Kingdom)

many people over the years - notably by the secretariats of UNIDROIT and UNCITRAL, but also by the representatives from many countries who had attended meetings over the years.

53. None the less, the result had not changed the view of the United Kingdom Government and, more importantly, of British commercial interests, that the new Convention would not be a help to international trade. In speaking of "commercial interests", he was referring to all those involved - operators of transport terminals, shippers of goods and carriers, and the insurers of all such interests. Two aspects of the Convention prompted that conclusion. First, the many and varied operators to be covered, from small stevedoring firms to operators of large container terminals, and the differing operations they performed, would lead to the Convention being open to differing and uncertain interpretations. The uncertainties which remained in the text had already been commented upon: they related, for example, to the definition of "carrier" and to the period of responsibility in article 3. Such uncertainties were unfortunate in themselves. More importantly, they meant that costs would not be reduced for the various parties concerned, since they would still need full insurance for their goods.

54. His delegation's second concern was the strict - though not absolute - basis of liability in article 5, which, combined with the lack of a global limit in article 6, and the possibility of breaking the limits even for the activities of a servant or agent in article 8, would create severe insurance problems, which his delegation had spelt out in the First Committee. He hoped any State which contained transport terminals would consider that aspect very carefully when deciding whether to ratify the Convention. It seemed unlikely that the United Kingdom would be among those doing so.

55. Mr. HORNBY (Canada) said that his delegation, while it had voted in favour of the Convention, had certain legal difficulties with the text. He believed the lack of clarity in some of its provisions would prove confusing and lead to delays and difficulties in implementing the Convention. He referred, in particular, to the absence of any clear understanding concerning the duration of the period of responsibility in article 3. The rules in article 8 concerning the loss of the right to limit liability, and the decisions of the Conference on the substantive rules of liability, would impose an unfair burden on operators, by comparison with the responsibilities of carriers under existing law. Those shortcomings in the Convention would expose operators to greater liability and higher costs, which would impede rather than advance the growth of international trade. However, his delegation's support for the Convention testified to his country's endorsement of the principles of progressive harmonization of international trade law and of the sterling work of UNCITRAL and UNIDROIT.

56. Mr. LARSEN (United States of America) said that his delegation had voted in favour of the Convention as a whole, since article 15 stated that the Convention did not modify any rights or duties which might arise under any international carriage of goods convention, or under any national law giving effect to that convention. Since stevedores might be entitled to certain rights of the carrier arising under the Hague Rules, article 15 preserved the option of seeking the benefit of the carrier's rights under the Hague Rules.

57. Miss VAN DER HORST (Netherlands) said that her delegation had abstained on the Convention as a whole, for the reasons it had already given in the First Committee. She associated herself with the views expressed by the representative of the United Kingdom.

58. Mr. ROMAN (Belgium) said that although his delegation supported the principle embodied in the Convention, it had abstained on the Convention as a whole, for reasons similar to those stated by the representative of the United Kingdom.

CREDENTIALS OF REPRESENTATIVES TO THE CONFERENCE (agenda item 6)

(b) REPORT OF THE CREDENTIALS COMMITTEE (A/CONF.152/8)

59. Mr. HORNBY (Canada), Chairman of the Credentials Committee, introduced the Committee's report (A/CONF.152/8). The States listed in paragraph 4 were those for which credentials had been submitted by 15 April 1991, whether formally or in the form of a cable, facsimile, letter or note verbale. Having examined those credentials, the Committee was recommending to the Conference, in paragraph 9 of its report, the adoption of the following draft resolution:

"The Conference,

Having examined the report of the Credentials Committee,

Approves the report of the Credentials Committee."

60. Mr. BERGSTEN (Executive Secretary) observed that some of the States listed in paragraph 4 of the report had not yet submitted formal credentials as required by rule 3 of the rules of procedure of the Conference, but were expected to do so before its closure. A revised version of the Committee's report would be issued before the end of the Conference, including the names of those States which had submitted formal credentials in the meantime.

61. The PRESIDENT invited the Conference, on that understanding, to adopt the draft resolution proposed in paragraph 9 of document A/CONF.152/8.

62. The draft resolution was adopted by 32 votes to 1.

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE, AND OF THE FINAL ACT OF THE CONFERENCE (agenda item 10) (continued) (A/CONF.152/11, 12; A/CONF.152/L.1, L.6)

63. Mr. BERGSTEN (Executive Secretary) introduced the draft Final Act of the Conference (A/CONF.152/L.1). The name of Zaire, which had registered but subsequently withdrawn its representation from the Conference, should be deleted from the list of participating States contained in paragraph 3. The date of the adoption of the Convention (paragraph 12) was 17 April 1991; it would be opened for accession on 19 April 1991.

64. Mr. BERAUDO (France) noted that the list of intergovernmental organizations with observer status at the Conference did not include the Central Commission for the Navigation of the Rhine (CCNR), which had been present at a meeting the previous day.

65. The PRESIDENT invited the Conference to adopt the draft Final Act.

66. The draft Final Act of the Conference was adopted by 36 votes to none.

67. The PRESIDENT, in conclusion, expressed his gratitude to all who had contributed to the successful completion of the Convention, and especially to UNIDROIT, UNCITRAL and its Working Group, the Chairmen of the Committees of the Conference, and the Secretariat.

The meeting rose at 5.05 p.m.